

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 02-0470P
Adjusted Gross Income Tax
For Calendar Year 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

At audit it was determined that the taxpayer failed to calculate and pay adjusted gross income tax. Taxpayer filed a consolidated return that included three entities doing business in Indiana or that were registered to do business in Indiana. Taxpayer merged into an acquiring corporation on December 4, 1998. Upon audit, it was determined that two of the included entities had no Indiana situs or income received from sources within the state of Indiana. Neither of these corporations may be included in an Indiana return for adjusted gross income. The auditor made those adjustments.

Non-Business Income was determined to be business income for the remaining location. The auditor made an adjustment and the audit excluded the two entities from the apportionment factor.

Taxpayer filed a penalty protest letter dated September 6, 2002 stating that it did not intentionally under report its income.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states it did not intentionally under report its income, that it merely erred in its application of the Indiana law associated with the treatment of installment sales, which was a unique situation. Taxpayer requests a penalty waiver primarily

“to assess a penalty upon the corporation would result in an assessment to the taxpayer’s acquiring company for a return it did not participate in preparing” and it acquired all the stock in August 1998, a year subsequent to the year under audit. Taxpayer’s acquiring company further states it had no knowledge of taxpayer’s filing error and merely facilitated the audit. Taxpayer requests a penalty waiver for the unintentional errors in the application of the Indiana tax law by a corporation that was acquired.

45 IAC 15-11-2(b) states, “Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to correctly report its adjusted gross income that amounted to eighty-four percent (84%) of its tax and has not provided reasonable cause. Taxpayer did not make itself aware of the Indiana tax laws when doing business in this state and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.